

RUDY

November 6, 2007

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2007 NOV -7 P 3 44

Thomasenia P. Duncan
General Counsel
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5942

Dear Ms. Duncan,

The Rudy Giuliani Presidential Committee, Inc. ("RGPC") and John Gross, as Treasurer, have received the complaint designated as MUR 5942 and hereby provide this response.

The complaint filed in this matter alleges that RGPC received an illegal in-kind corporate contribution in violation of the Federal Election Campaign Act of 1971 and the Bipartisan Campaign Reform Act of 2002. The complaint argues that RGPC should have paid the higher 'fixed-date rate' rather than the 'standby rate,' a difference of \$77,083, for an ad that ran in the September 14, 2007 publication of the *New York Times*. The facts set forth in this response show that RGPC paid the correct rate for the ad, and there is no reason to believe that a violation occurred.

RGPC paid the appropriate standby rate for an ad that had no guarantee of being run on any particular day, thus meeting the *New York Times*'s standards for a standby rate. The *New York Times* offers a \$64,575 'standby rate' for full-page, black-and-white advertisements that can run anytime in a seven-day window. See Exhibit A, Seelye article. RGPC paid this rate for an ad that ran on September 14, 2007. RGPC paid the correct rate, since it was not promised that its ad would run on a specific day. See Exhibit B, Heck Affidavit, and Exhibit A. RGPC purchased the ad at the standby rate knowing that the ad would run sometime in the next seven days.

This complaint was prompted by the *New York Times*'s admission of giving MoveOn.org a discounted standby rate when it should have charged MoveOn.org the fixed date rate of \$142,083. As described by Clark Hoyt, the "public editor" of the *New York Times*, in a September 23, 2007 *New York Times* article:

Paid for by the Rudy Giuliani Presidential Committee, Inc.

www.JoinRudy2008.com

29044241375

29044241376

Eli Pariser, the executive director of MoveOn.org, told me that his group called The Times on the Friday before Petracus's appearance on Capitol Hill and asked for a rush ad in Monday's paper. He said The Times called back and "told us there was room Monday, and it would cost \$65,000." . . . Advertisers who get standby rates aren't guaranteed what day their ad will appear, only that it will be in the paper within seven days.

See Exhibit C, Hoyt article. According to these facts, MoveOn.org asked for its ad to appear on a specific day and was given the standby rate for that specific day.

In fact, MoveOn.org's ad could not have appeared on any other day because its text tied it to a specific event. General Petracus was scheduled to testify before Congress on Monday, September 10, and MoveOn.org did not request an ad until Friday, September 7. The ad said, "Today, before Congress and before the American people, General Petracus is likely to become General Betray Us." See Exhibit D, MoveOn.org ad. The ad would not have made any sense and neither would it have had any impact if it had run any day other than the particular day on which MoveOn.org asked for it to run. Moreover, the ad predicted how the General was likely to testify that day, so its purpose would have been nullified if it had run after his actual testimony. See Exhibit D. The *New York Times* granted this last minute request to run the ad on a specific day. As Hoyt explains:

Catherine Mathis, vice president of corporate communications for The Times, said, "we made a mistake." She said the advertising representative failed to make it clear that for that rate The Times could not guarantee the Monday placement but left MoveOn.org with the understanding that the ad would run then.

See Exhibit C, Hoyt article.

In contrast, the *New York Times* made it completely clear to RGPC that it was being given a standby rate and that its ad was not guaranteed to run on September 14. Patti Heck, the media buyer who placed the ad, was told repeatedly by the sales representative at the *New York Times* that she could not promise that the ad would run on September 14. Instead, Heck was informed that the *New York Times* could not accept that order at the standby rate for a specific date, but only for a range of dates. Heck was told, "I can't promise it will be in on Friday. If it runs, great, and if it doesn't, so be it." In fact, in reference to the complaint filed in this matter, the *New York Times* reported, "Ms. Mathis, The Times spokeswoman, confirmed that the newspaper did not commit to a specific date." See Exhibit A, Seelye article.

Moreover, RGPC was not constrained by the time frame in which it could run its ad. The content of the MoveOn.org ad required the ad to run on Monday, September 10, or it would have been irrelevant. Unlike the MoveOn.org ad, the RGPC ad was not anchored by any references to dates or events in the future. See Exhibit E, RGPC ad. The ad referred to events that had already occurred and spoke generally about General

Petraeus's qualifications--the ad could have run during any day of the 7 day standby window and it would have remained meaningful.

Because of the complete lack of factual basis for the allegations contained in the complaint, we believe the Commission should dismiss the complaint and take no further action in this matter.

Please do not hesitate to contact me at _____ (telephone) or (646) 274-9804 (fax) with questions or concerns.

Sincerely,


Laurence Levy
General Counsel
Rudy Giuliani Presidential Committee, Inc.

29044241377

Exhibit A

29044241370

Group Pays Higher Price For an Ad In The Times

By KATHARINE Q. SEELYE

MoveOn.org said yesterday that it paid The New York Times \$77,500 after the newspaper revealed that its advertising department had undercharged the organization for an advertisement that ran two weeks ago and proved controversial.

Many critics, including some of the Republican presidential candidates as well as Vice President Dick Cheney, had accused the newspaper of giving subsidized rates to MoveOn, a liberal anti-war organization, out of sympathy with its views. The advertisement asked whether Gen. David W. Petraeus, commander of American troops in Iraq, should be called "General Betray Us?"

The newspaper had maintained that it charged MoveOn the same "standby" rate of \$64,975 that it charges all advocacy groups for full-page, black-and-white advertisements that can run anytime in a seven-day window. But the newspaper's spokeswoman, Catherine Mathis, was quoted Sunday by The Times's public editor, Clark Hoyt, as saying an advertising sales representative had "made a mistake" in granting the discount.

The sales representative should have charged \$122,000, she said, because MoveOn wanted the advertisement to run on a specific day — Monday, Sept. 10 — and was therefore not entitled to the "standby" rate.

In a follow-up interview yesterday, Ms. Mathis declined to comment on how the original mistake occurred or how it came to light.

Asked if the sales representative was sympathetic to MoveOn or was unaware of the pricing policy, Ms. Mathis said: "The salesperson did not see the content of the ad at the time the rate was quoted. There was no bias."

She declined to discuss whether any disciplinary action would be taken but said the sales staff had been instructed "in the proper use of standby rates." "It's important to remind people of our policies and practices," she said.

Mr. Hoyt had concluded in his column that the advertisement "appears to fly in the face of an internal advertising acceptability manual that says, 'We do not accept opinion advertisements that are attacks of a personal nature.'"

In response, Ms. Mathis said: "The public editor serves as the reader's representative; his opinions and conclusions are his own. The Times believes the ad was within our acceptability guidelines."

The advertisement has created a storm of protest, with President Bush calling it "disgusting."

Kelly McBride, the ethics group leader at the Poynter Institute, said in an interview that The Times should be "absolutely transparent" about its advertising rates and what happened in this case.

"It's hard to explain away when it starts to undermine your credibility on the news side, because that's what you're selling, your credibility," Ms. McBride said.

She said transparency was difficult for newspapers as they faced financial pressures. "The changes in advertising rates because of the Internet make transparency less likely and less possible," she said. The result, she said, is that "the people who mistrust journalism are going to assign bias as the motive" for the discount to MoveOn, even though news and advertising departments are separate.

The American Conservative Union has filed a complaint with the Federal Election Commission against both The Times and MoveOn. It said The Times violated federal rules because corporations cannot make campaign donations. It said MoveOn's acceptance of the rate was a violation because the "contribution" was over the legal limit.

Among those attacking the advertisement has been Rudolph W. Giuliani, the Republican presidential candidate, who ran his own advertisement later in the week. He paid the same standby rate that MoveOn paid.

Lane Hudson, a liberal blogger (www.newsoftheleft.com), filed a complaint Monday saying the Giuliani campaign should pay The Times an additional \$77,000 for its advertisement; otherwise it would be accepting an illegal corporate contribution that was over the legal limit.

A spokesman for the Giuliani campaign said that it would not pay the difference because The Times did not guarantee when it would run the advertisement. "Our ad not only met the acceptability standards of The New York Times, but it was placed at the standby rate with no commitment it would run on a specific date," the spokesman said.

Ms. Mathis, The Times spokeswoman, confirmed that the newspaper did not commit to a specific date.

Exhibit C

29044241380

The New York Times
nytimes.com

PRINTED FROM THE "NEW YORK TIMES"
SPONSORED BY [REDACTED]

September 23, 2007

THE PUBLIC EDITOR

Betraying Its Own Best Interests

By CLARK HOYT

FOR nearly two weeks, The New York Times has been defending a political advertisement that critics say was an unfair shot at the American commander in Iraq.

But I think the ad violated The Times's own written standards, and the paper now says that the advertiser got a price break it was not entitled to.

On Monday, Sept. 10, the day that Gen. David H. Petraeus came before Congress to warn against a rapid withdrawal of troops, The Times carried a full-page ad attacking his truthfulness.

Under the provocative headline "General Petraeus or General Betray Us?" the ad, purchased by the liberal activist group MoveOn.org, charged that the highly decorated Petraeus was "constantly at war with the facts" in giving upbeat assessments of progress and refusing to acknowledge that Iraq is "mired in an unwinnable religious civil war."

"Today, before Congress and before the American people, General Petraeus is likely to become General Betray Us," MoveOn.org declared.

The ad infuriated conservatives, dismayed many Democrats and ignited charges that the liberal Times aided its friends at MoveOn.org with a steep discount in the price paid to publish its message, which might amount to an illegal contribution to a political action committee. In more than 4,000 e-mail messages, people around the country raged at The Times with words like "despicable," "disgrace" and "treason."

President George W. Bush called the ad "disgusting." The Senate, controlled by Democrats, voted overwhelmingly to condemn the ad.

Vice President Dick Cheney said the charges in the ad, "provided at subsidized rates in The New York Times" were "an outrage." Thomas Davis III, a Republican congressman from Virginia, demanded a House investigation. The American Conservative Union filed a formal complaint with the Federal Election Commission against MoveOn.org and The New York Times Company. FreedomsWatch.org, a group recently formed to support the war, asked me to investigate because it said it wasn't offered the same terms for a response ad that MoveOn.org got.

Did MoveOn.org get favored treatment from The Times? And was the ad outside the bounds of acceptable political discourse?

The answer to the first question is that MoveOn.org paid what is known in the newspaper industry as a

standby rate of \$64,575 that it should not have received under Times policies. The group should have paid \$142,083. The Times had maintained for a week that the standby rate was appropriate, but a company spokeswoman told me late Thursday afternoon that an advertising sales representative made a mistake.

The answer to the second question is that the ad appears to fly in the face of an internal advertising acceptability manual that says, "We do not accept opinion advertisements that are attacks of a personal nature." Steph Jespersen, the executive who approved the ad, said that, while it was "rough," he regarded it as a comment on a public official's management of his office and therefore acceptable speech for The Times to print.

By the end of last week the ad appeared to have backfired on both MoveOn.org and fellow opponents of the war in Iraq — and on The Times. It gave the Bush administration and its allies an opportunity to change the subject from questions about an unpopular war to defense of a respected general with nine rows of ribbons on his chest, including a Bronze Star with a V for valor. And it gave fresh ammunition to a cottage industry that loves to bash The Times as a bastion of the "liberal media."

How did this happen?

Eli Pariser, the executive director of MoveOn.org, told me that his group called The Times on the Friday before Petraeus's appearance on Capitol Hill and asked for a rush ad in Monday's paper. He said The Times called back and "told us there was room Monday, and it would cost \$65,000." Pariser said there was no discussion about a standby rate. "We paid this rate before, so we recognized it," he said. Advertisers who get standby rates aren't guaranteed what day their ad will appear, only that it will be in the paper within seven days.

Catherine Mathis, vice president of corporate communications for The Times, said, "We made a mistake." She said the advertising representative failed to make it clear that for that rate The Times could not guarantee the Monday placement but left MoveOn.org with the understanding that the ad would run then. She added, "That was contrary to our policies."

Arthur Sulzberger Jr., the publisher of The Times and chairman of its parent company, declined to name the salesperson or to say whether disciplinary action would be taken.

Jespersen, director of advertising acceptability, reviewed the ad and approved it. He said the question mark after the headline figured in his decision.

The Times bends over backward to accommodate advocacy ads, including ads from groups with which the newspaper disagrees editorially. Jespersen has rejected an ad from the National Right to Life Committee, not, he said, because of its message but because it pictured aborted fetuses. He also rejected an ad from MoveOn.org that contained a doctored photograph of Cheney. The photo was replaced, and the ad ran.

Sulzberger, who said he wasn't aware of MoveOn.org's latest ad until it appeared in the paper, said: "If we're going to err, it's better to err on the side of more political dialogue. ... Perhaps we did err in this case. If we did, we erred with the intent of giving greater voice to people."

For me, two values collided here: the right of free speech — even if it's abusive speech — and a strong personal revulsion toward the name-calling and personal attacks that now pass for political dialogue, obscuring rather than illuminating important policy issues. For The Times, there is another value: the protection of its brand as a newspaper that sets a high standard for civility. Were I in Jespersen's shoes, I'd have demanded changes to eliminate "Betray Us," a particularly low blow when aimed at a soldier.

In the fallout from the ad, Rudolph Giuliani, the former New York mayor and a Republican presidential candidate, demanded space in the following Friday's Times to answer MoveOn.org. He got it — and at the same \$64,575 rate that MoveOn.org paid.

Bradley A. Blakeman, former deputy assistant to President Bush for appointments and scheduling and the head of FreedomWatch.org, said his group wanted to run its own reply ad last Monday and was quoted the \$64,575 rate on a standby basis. The ad wasn't placed, he said, because the newspaper wouldn't guarantee him the day or a position in the first section. Sulzberger said all advocacy ads normally run in the first section.

Mathis said that since the controversy began, the newspaper's advertising staff has been told it must adhere consistently to its pricing policies.

The public editor serves as the readers' representative. His opinions and conclusions are his own. His column appears at least twice monthly in this section.

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29044241384

Exhibit D

GENERAL PETRAEUS OR GENERAL BETRAY US?

Cooking the Books for the White House

General Petraeus is a military man constantly at war with the facts. In 2004, just before the election, he said there was "tangible progress" in Iraq and that "Iraqi leaders are stepping forward." And last week Petraeus, the architect of the escalation of troops in Iraq, said, "We say we have achieved progress, and we are obviously going to do everything we can to build on that progress."

Every independent report on the ground situation in Iraq shows that the surge strategy has failed. Yet the General claims a reduction in violence. That's because, according to the *New York Times*, the Pentagon has adopted a bizarre formula for keeping tabs on violence. For example, deaths by car bombs don't count. The *Washington Post* reported that assassinations only count if you're shot in the back of the head — not the front. According to the *Associated Press*, there have been more civilian deaths and more American soldier deaths in the past three months than in any other summer we've been there. We'll hear of neighborhoods where violence has decreased. But we won't hear that these neighborhoods have been ethnically cleansed.

Most importantly, General Petraeus will not admit what everyone knows: Iraq is mired in an unwinnable religious civil war. We may hear of a plan to withdraw a few thousand American troops. But we won't hear what Americans are desperate to hear: a timetable for withdrawing all our troops. General Petraeus has actually said American troops will need to stay in Iraq for as long as ten years.

Today, before Congress and before the American people, General Petraeus is likely to become General Betray Us.

MoveOn.org
POLITICAL ACTION

29044241386

Exhibit E

"The willing suspension of disbelief."

- Hillary Clinton, 9/11/07

The Democrats' Orchestrated Attacks on General Petraeus...

■ **Monday, September 10, 2007**

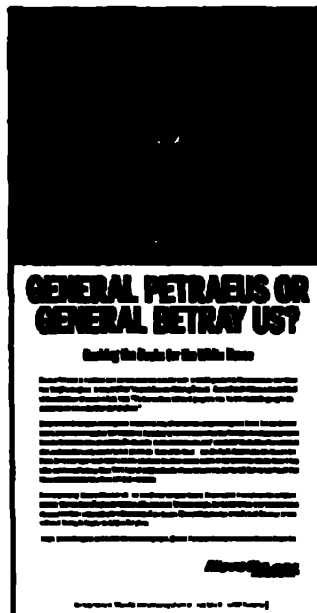
MoveOn.org calls General David Petraeus "General Betray Us" in a *New York Times* full page ad.

■ **Tuesday, September 11, 2007**

Hillary Clinton continued the character attack on General Petraeus and refused to denounce MoveOn.org's ad.

"Using blunter language than any other Democrat in the last two days, Mrs. Clinton told General Petraeus that his progress report on Iraq required 'the willing suspension of disbelief.'"

- New York Sun, 9/12/07



THE PETRAEUS RECORD...

★ **Four-Star General,
United States Army**

★ **Recognized in 2005 by U.S.
News and World Report as one
of America's 25 Best Leaders**

★ **The Defense Distinguished
Service Medal**

★ **Two awards of the Defense
Superior Service Medal**

★ **Four awards of the
Legion of Merit**

★ **The Bronze Star Medal
for Valor**

Who should America listen to...

**A decorated soldier's commitment to defending America,
or Hillary Clinton's commitment to defending MoveOn.org?**

**"These times call for statesmanship,
not politicians spewing political venom."**

- Mayor Rudy Giuliani

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